IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1993
No. 93-781

DARRYL SINKFIELD, QUINTON ROSS, BERNEST BROOKS, RUBIN McKINNON and ANDREW HAYDEN,

Petitioners,

vs.

PAUL CHARLES WESCH; MICHAEL FIGURES; CHARLES STEELE; GARRIA SPENCER; JAMES FOLSOM; and JIM BENNETT,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeal for the Eleventh Circuit

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RESPONDENT ALABAMA SECRETARY OF STATE JIM BENNETT'S RESPONSE IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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Questions Presented

1. Did the federal courts below err in enjoining state court proceedings concerned with the formulation and implementation of a congressional redistricting plan for the State of Alabama?

2. Where the District Court recognized that its 1992 interim plan would be superseded if the state legislature adopted a congressional redistricting plan for the 1994 elections, did the courts below err in not affording equal deference to the state judiciary?

Parties

The parties in the Court of Appeals are all shown in the caption.

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Opinions Below

Secretary Bennett adopts the statement of the Sinkfield Petitioners regarding the opinions below as presented on p. 1 of their Petition for Writ of Certiorari.

Jurisdiction

Secretary Bennett adopts the statement of the Sinkfield Petitioners regarding jurisdiction as presented on pp. 1-2 of their Petition for Writ of Certiorari.

Constitutional and Statutory Provisions Involved

Secretary Bennett adopts the statement of the Sinkfield Petitioners regarding the constitutional and statutory provisions involved as presented on p. 2 of their Petition for Writ of Certiorari.

Statement of Facts

Secretary Bennett adopts the Sinkfield Petitioners' Statement of Facts as presented on pp. 3-11 of their Petition for Writ of Certiorari.

Reasons for Granting the Writ

Respondent Bennett adopts the reasons for granting the writ presented by the Sinkfield Petitioners in their Petition for Writ of Certiorari and in addition states as follows:

This Court should grant a writ of certiorari because the Court of Appeals' decision squarely conflicts with Chapman v. Meier, 420 U.S. 1, 95 S.Ct. 751, 42 L.Ed.2d 766 (1975); Scott v. Germano, 381 U.S. 407, 85 S.Ct. 1525, 14 L.Ed.2d 477 (1965); and Growe v. Emison, ____ U.S. ____, 113 S.Ct. 1075, 122 L.Ed.2d 388 (1993), in which this Court ruled that federal courts should defer to states' efforts to redistrict themselves.

Under these decisions, the deference the federal courts should give to state redistricting efforts extends not only to state legislatures but to state court redis-

tricting proceedings as well. The District Court recognized that its 1992 interim plan would be superseded if the state legislature adopted a congressional redistricting plan for the 1994 elections. However, the District Court erred in not affording the state judiciary equal deference, as required by this Court in Growe v. Emison, and the Court of Appeals similarly erred in affirming the District Court's decision. Therefore, the Eleventh Circuit Court of Appeals should be reversed and the state court congressional redistricting litigation in Sinkfield v. Bennett, C. A. No. 93-689-PR (Circuit Court of Montgomery County, Alabama) allowed to proceed.

Argument

Redistricting Alabama's congressional districts is the prerogative of the State of Alabama, through its legislature or--should the legislature fail to act--through other state agencies, including the state judiciary. The United States Constitution leaves the primary responsibility for apportioning state legislative and federal congressional districts with the states themselves. U. S. Const., Art. I, § 2.

This Court has held that responsibility for reapportionment is primarily the duty of a state "through its legislature or other body" rather than of federal courts. Chapman v. Meier, 420 U.S. 1, 27, 95 S.Ct. 751, 42 L.Ed.2d 766, 784 (1975). In Scott v. Germano, 381 U.S. 407, 85 S.Ct. 1525, 14 L.Ed.2d 477 (1965), this Court held that both the legislative and judicial branches

of state government are preferred to federal courts as agents of reapportionment. 381 U.S. 407, 409.

Finally, this Court's most recent decision regarding the relation of state and federal courts relative to redistricting proceedings in Growe v. Emison, ____ U.S. ____, 113 S.Ct. 1075, 122 L.Ed.2d 388 (1993), is unequivocal in affirming the primacy of states, including their judiciaries, in designing their legislative and congressional districts. This primacy "compels a federal court to defer" to state court redistricting proceedings. 113 S.Ct. at 1081.

In its July 21, 1993 order enjoining state court congressional redistricting proceedings, the District Court attempts to distinguish Growe by stating that unlike the case at bar, the state in Growe was operating under an unconstitutional plan and the

federal judicial proceeding was parallel to the state court case rather than prior to it (See Petitioners' Appendix, p. 1-c). The District Court order stated that if a constitutional plan is put in place by a federal court, individual citizens cannot later attack the plan in a state court. However, contrary to the District Court's order, the issue is not whether federal court-ordered congressional redistricting plan under which the State of Alabama is now operating is constitutional. The issue, rather, is whether the District Court must give the state judiciary the same deference as it does the state legislature with respect to redistricting.

The congressional redistricting plan implemented in Wesch v. Hunt, 785 F. Supp. 1491 (S. D. Ala. 1992) under the District Court's final judgment is on its own terms an interim plan which shall not remain in

effect in the event the Alabama Legislature enacts a redistricting plan and has the same precleared (See Petitioners' Appendix, p. 24-b). Under Growe v. Emison, the deference which the District Court extends to legislative action on redistricting must be understood to extend to **state judicial action** on redistricting as well. Both are branches of the state which have primacy over federal courts in redistricting matters. Respondent Bennett's position is that, in light of the deference to state court redistricting proceedings mandated under Scott v. Germano, Chapman v. Meier and Growe v. Emison, a state court congressional redistricting plan is able to supplant an interim federal plan in the same way as can a legislatively-produced plan.

In Growe v. Emison, this Court held that there is only one justification compelling enough to allow a federal court to

interfere with a state's exercise of its redistricting prerogative:

> Absent evidence that these state branches will fail timely to perform that duty, a federal court must neither affirmatively obstruct state reapportion- ment nor permit federal litigation to be used to impede it. Growe v. Emison, 113 S.Ct. 1075 (1993).

The single reason given by this Court to allow a federal court to intervene in a state's redistricting process--failure by the state to adopt a plan in time to be used in the upcoming elections--is manifestly not present in this case. The state court in this case was proceeding in timely fashion until those proceedings were enjoined by the District Court, which injunction was at first stayed and then later reinstated by the Court of Appeals. The state court could still formulate a congressional redistricting plan in time for the upcoming election cycle if only allowed to

do so. The filing deadline for congressional primary elections in Alabama is April 8, 1994; the primary election itself is on June 7, 1994. Code of Alabama, 1975 § 17-16-6 (Primary to be held on first Tuesday in June) and § 17-16-11 (Filing deadline for primary is no later than 60 days before the date of the primary).

Therefore, the necessary justification for federal judicial intervention in the Montgomery County Circuit Court congressional redistricting proceedings is absent. The federal court injunction of state court redistricting proceedings under these circumstances constitutes just the sort of "affirmative obstruction" of state reapportionment efforts that this Court warned against in Growe v. Emison. The District Court's injunction, and the Court of Appeals affirmance thereof, in effect bars the state court from doing what state courts have been en-

couraged to do by this Court for the past several decades.

Conclusion

States have the primary responsibility for redistricting their congressional districts. In situations in which a federal court congressional redistricting plan is already in place, a state may (and constitutionally should) still act to fashion its own plan, through its legislature or through its judiciary. In the instant case, the federal district court has properly fulfilled its function of serving as a "backstop" when Alabama's state legislature failed to pass a congressional redistricting plan and obtain preclearance for it prior to the 1992 election cycle. The State of Alabama, acting through its state courts, is now prepared to proceed with congressional redistricting for the next round of elec-

tions. It should be allowed to do so. Accordingly, Respondent Secretary of State Bennett respectfully requests that this Court grant the writ of certiorari sought by the Sinkfield Petitioners in this proceeding.

Respectfully submitted,

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